IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WA.No. 1202 of 2007()

AGAINST THE ORDER IN WPC.10082/2007 Dated 30/03/2007

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APPELLANT/4TH RESPONDENT:

THE MANAGING DIRECTOR, KERALA STATE
CO-OPERATIVE RUBBER MARKETING FEDERATION
(RUBBER MARK), GANDHI NAGAR, KOCHI.

BY ADV. SRI.BABU KARUKAPADATH

RESPONDENTS/PETITIONER AND RESPONDENTS NOS. 1 TO 3:

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1. KALLUMALA AGRICULTURAL CO-OPERAIVE
BANK LTD., REPRESENTED BY ITS SECRETARY
T.K.USHAKUMARI, NO.HW-14, MAVELIKKARA,
ALAPPUZHA DISTRICT.

2. THE REGISTRAR, OFFICE OF THE REGISTRARS
OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. JOINT REGISTRAR,
OFFICE OF THE J.R. OF CO-OPERATIVE SOCIETIES,
ALAPPUZHA.

4. ASSISTANT REGISTRAR (GENERAL),
OFFICE OF THE CO-OPERATIVE SOCIETIES,
MAVELIKKARA.

BY SPL. GOVERNMENT PLEADER FOR CO-OPERATIVE SOCIETIES,
SMT. A.G. ANITHA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1202 OF 2007

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Dated this the 24th May, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The 4th respondent in the Writ Petition No. 10082 of 2007 is the appellant in this appeal.

2. The appellant is calling in caution the correctness or otherwise of the interim order passed by this court in W.P.(C) 10082 of 2007 dated 30.03.2007. By the impugned order, the learned single Judge has directed the appellant to pay to the petitioner, the first respondent herein, an amount of Rs. 50 lakhs within two months.

3. Brief facts are:

The appellant is the society registered under the provisions of the Kerala Co-operative Societies Act and the Rules framed thereunder. The appellant is the apex society having 90% share capital subscribed by the State Government . It is engaged in the business of procurement and

sale of rubber and its allied products.

The contesting respondent/first respondent is the Service Co-operative Bank . The contesting respondent was the petitioner in the Writ Petition No. 10082 of 2007. The relief sought for in the Writ Petition was to direct the appellant to disburse the amount as per Exts. P1(a) to P1(e) with interest. Those exhibits are fixed deposit receipts.

4. The learned single Judge while entertaining the Writ Petition has granted the interim prayer, as sought for, by the contesting respondent in this appeal.

5. Heard learned counsel on both sides. Learned counsel for the appellant-society would submit that the contesting respondent had deposited certain amounts with the appellant's society as long term deposit with a clear understanding that the contesting respondent would be eligible and entitled for interest once in six months on the amount deposited. Further it is stated that the appellant's society was regular in paying interest to the contesting respondent .

6. According to the counsel for the appellant-society since there was a dispute with regard to non-payment/refund of the amount

deposited, the contesting respondent ought to have raised the dispute, as provided under section 69 of the Kerala Co-operative Societies Act. Therefore, it is submitted, that when the main relief itself cannot be granted by this court and that the learned single Judge ought not to have granted the interim prayer.

7. Par contra, learned counsel for the contesting respondent would submit that the deposit so made by the contesting respondent with the appellant's society was a short term deposit and since the request for refund of that money was not acceded by the appellant's society, they were constrained to approach this court for appropriate reliefs.

8. It is the admitted fact that the appellant and the contesting respondent are the societies registered under the provisions of the Kerala Co-operative Societies Act and that the contesting respondent had made certain deposit with the appellant's society . If, for any reason, the appellant's society did not refund any amount deposited, there would be a dispute between the appellant's society and the contesting respondent and that dispute requires to be resolved as provided under section 69 of the Kerala Co-operative Societies Act.

9. Without filing any dispute, the contesting respondent had rushed to this court by filing the Writ Petition for certain directions to the appellant's society. In our opinion, the first and foremost, the learned single Judge could not have entertained the Writ Petition when alternative and efficacious remedies are available for the contesting respondent. Apart from that, Section 69 of the Act provides itself that the dispute between the parties has to be resolved by filing appropriate dispute before the Registrar of the Co-operative Societies. Without doing so, the contesting respondent had rushed to this Court. The learned single Judge could not have entertained the Writ Petition and could not have issued any direction. We are of the view that when the main relief itself cannot be granted, interim order/direction could not have been issued by the learned single Judge. Interim order is granted in the aid of main relief, not vice versa. In that view of the matter, the impugned order passed by the learned single Judge cannot be sustained.

Accordingly, the following:

Order

Appeal is allowed. The impugned order passed by the learned

single Judge is set aside. Certain observations made by us in the course of judgment is only for the disposal of the Writ Appeal. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.